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In the United States Patent and Trademark Office

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Date: 1/25/08

Mark D. Lenhart

Serial Number: 10/604,138

Appn. Filed: 06/27/2003

Patent Agent: Mark D. Lenhart, # 53203

Applicant: Stephen LaBerge

Examiner/GAU: Gregory W. Mitchell / 1617

Doc #: ML200

Appn. Title: Substances That Enhance Recall and Lucidity During Dreaming

Petition to Withdraw Holding of Abandonment under 37 CFR 1.181

United States Patent and Trademark Office, Customer Service Window, Mail Stop Petition
Randolph Building; 401 Dulany Street, Alexandria, VA 22314

Dear Sir:

The applicant hereby respectfully petitions that the above application have it's holding of abandonment withdrawn under 37 CFR 1.181(a) for the following reasons:

- 1: Non-receipt of multiple Office actions, including the notice of abandonment (a record of this is available on the applications USPTO electronic records, according to Examiner Williams).
- 2: The examiner of record, Leonard Williams, (1-571-272-0685), supports the applicants request to have the abandonment withdrawn via special petition. Abandonment of the patent application was not sought, nor approved, by Examiner Williams. According to Examiner Williams the abandonment was carried out by outside contractors without his desire, knowledge or approval.
- 3: Applicant/Agent was diligent in prosecuting the patent, and at the time of the abandonment, in ongoing telephone communication with the Examiner regarding an internal USPTO billing problem.
- 4: The reason given for the notice of abandonment, "failure to reply in a timely manner to an Office communication" of 11/03/2004, is patently incorrect. The applicant has attached as exhibits B a copy of the canceled/cashed check sent in timely reply to the 11/03/2004 Office communication, and according to examiner Williams, the USPTO electronic records reflect both the timely receipt of a response to the Office communication, and the failure of the USPTO financial office to send any further notice to the agent of any problem or any need for further funds.
- 5: Attached is a statement of fact and a declaration in support thereof, including Exhibits A & B: A - the original 11/03/2004 Office communication (\$84 bill); and B - a copy of the canceled check used to pay the fee requested in the 11/03/2004 Office communication within the deadline.

Furthermore, to the best of my knowledge and belief, all statements made herein are true and were made with the knowledge that willful false statements are unlawful and punishable by fine or imprisonment, or both.

Respectfully,

Applicant, Stephen LaBerge,

SLaBerge

c/o

Mark D. Lenhart

Mark D. Lenhart, Patent Agent

1/25/08

Date

650-464-7775 (phone) / 1-860-831-9882 (fax) / emdls@pacbell.net / 2055 Berkeley Way, Berkeley, CA 94704

Declaration in Support of Accompanying Petition to Withdraw Abandonment

In support of the accompanying Petition to Withdraw Abandonment, applicant/agent declares:

On January 9th, 2008, applicant/agent first received the formal notice of abandonment via FAX. According to the examiner (Leonard Williams), the internal electronic records of the USPTO for this patent application indicate that the notice of abandonment, mailed 2/27/2007, failed to be delivered to the Berkeley address by the US Post Office for reasons unknown. Please note that the address listed on the notice of abandonment, 2055 Berkeley Way, Berkeley, CA, 94704, was, and still is, valid and functional. Also, the applicant/agent diligently and continually monitored the status of the patent online, and despite the billing issue, the patent was still listed as active until some point within the last year.

Furthermore, attached Exhibits A and B show that the reason given for the abandonment – failure to reply in a timely manner to an office communication, is incorrect. In November of 2004, a USPTO office communication was sent requesting an additional independent claim fee of \$84.00 to be paid for application 10/604,138. The communication was returned within the deadline, including the check for the \$84.00.

In June of 2006, due to the delays and multiple infringements, a Petition to Make Special (for 10/604,138) was mailed to Examiner Gregory Mitchell. Approximately five months later, the petition was returned, unopened. The (new) examiner, Leonard Williams, was contacted to inquire about the patent's status. (The originally assigned examiner, Gregory Mitchell, had left the PTO.) Mr. Williams noted that there was a \$4.00 billing issue for which no notice was ever sent, and that it would need to be cleared up with the Office of Finance (and that he had no power to remedy the situation as a patent examiner).

Numerous calls to the Office of Finance were made between 2006 and 2007, (including to office manager, Cynthia Streater) requesting assistance in fixing the billing problems, and/or requesting to pay the fee, and/or requesting another office communication to allow the \$4.00 fee to be paid. The Office of Finance repeatedly claimed that they were unable to deal with the issue, due to the status code that the patent was showing on their computer. They claimed it was something the examiner would have to deal with. Simultaneously, Examiner Williams determined that the problem was out of his scope of influence. After many requests over many months, no office communication was forthcoming. A \$4.00 check mailed in an attempt to deal with the problem was returned unopened. Following Examiner Williams suggestions, the applicant/agent contacted various supervisors in an attempt to determine who might be able to help, and continual attempts have been made by this patent agent to remedy the situation, both before and after the patent was declared abandoned.

According to Examiner Williams, factual records of the Office of Finance's failure to send notice of any billing issues is available in the USPTO electronic records for this application. Furthermore, these records show that both the Office Communication of 11/03/2004 was replied to in a timely manner, and that notice of abandonment was never received by the applicant/agent.

Therefore, the applicant respectfully requests that this patent's abandonment be withdrawn as soon as possible, and that the examiner be allowed to begin prosecuting it immediately.

Furthermore, to the best of my knowledge and belief, all statements made herein are true and were made with the knowledge that willful false statements are unlawful and punishable by fine or imprisonment, or both.

Respectfully,

Applicant, Stephen LaBerge,

c/o

Mark D. Lenhart
Mark D. Lenhart, Patent Agent

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SLaBerge

1/25/08

Date


**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

 Address : COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED:

INFORMALITY RE PAYMENT OF FEE

The informality regarding the payment of the fee in connection with ☒ the original filing fee ☐ the amendment filed _____ is indicated below.

A. FEE DUE

1. ☐ The amendment is considered incomplete in that the funds in Deposit Account No. _____ are insufficient to cover the entire fee due. The balance is due within the period set below.
2. ☐ The amendment is considered an incomplete response, in that payment of \$ _____ is insufficient to cover the claims as shown in the attached Patent Application Fee Determination Record. Remittance is due within the period set below.
3. ☐ The amendment has not been entered, since applicant has failed to remit (or authorize charge to a Deposit Account) the fee as indicated on the attached Patent Application Fee Determination Record. Remittance or authorization is due within the period set below.
4. ☒ The filing fee of \$ 375.00 submitted in this application is insufficient.
A balance of \$ 84.00 is due for additional claims.
5. ☐

APPLICANT IS GIVEN THE REMAINDER OF THE SET PERIOD FOR RESPONSE,
OR ONE (1) MONTH FROM THE DATE OF THIS LETTER, WHICHEVER IS LONGER,
WITHIN WHICH TO REMIT THE FEE OF \$ 84.00.

B. EXCESS PAYMENT:

5. ☐ It is noted that payment of \$ _____ is in excess of the amount necessary to cover the claims now in the application. See the attached Patent Application Fee Determination Record.

This matter of refund or credit to your account is being referred to the Finance Officer, for his consideration.

Coralie Betancourt
CLERK OF GROUP

Exhibit B – Canceled Check in reply to 11/03/2004 Office Communication

Wells Fargo View Check Copy

https://image.wellsfargo.com/mn1_kal_jm/display.do?SAMLart=...

**WELLS
FARGO**

Product Search

View Check Copy

Check Number	Date Posted	Check Amount	Account Number
000000000000223	12/10/04	84.0	RegularChecking 013-8214xxx

Mark David Lanhart
(415) 707-5025
2055 Berkeley Way #4
Berkeley, Ca 94704

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Pay to the order of *USPTO* \$ *84.00*

eighty four - 00/100 Dollars

WELLS FARGO BANK

10/10/04

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